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JOHN F. DAVIS, CLE

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST TERM, 1969

No. 571

UNITED STATES OF AMERICA,

vs Plaintiff-Appellee,

WILLIAM DAVIS,

Defendant-Appellant.

PETITION FOR A WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT COURT OF APPEALS

DOMINIC H. FRINZI
161 West Wisconsin Avenue
Milwaukee, Wisconsin 53203
Attorney for Defendant-Appellant

Of Counsel
EDWARD F. NEUBECKER
623 North Second Street
Milwaukee, Wisconsin 53202

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To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

Dominic H. Frinzi, on behalf of William Davis, respectfully petitions this honorable Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled case on June 6, 1969; petition for rehearing denied on July 18, 1969.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit # 16959 as printed in Appendix B, hereto, pp. App 1-App 5

JURISDICTION

This is a petition for a writ of Certiorari upon a conviction of a Federal Penal Statute, Title 18-U.S.C. Section 2421

QUESTIONS PRESENTED

A) Where the petitioner, along with another defendant is jointly charged in the same grand jury indictment with violating Title 18 U.S.C. Section 2421 arising out of the same incident, and where the petitioner is tried first in a separate trial without a jury, and where the second defendant testifies in petitioner's trial and is cross-examined, and where the second defendant is tried without a jury one day later before the same district judge, does the acquittal of the second defendant vitiate a conviction of the petitioner, where the record of petitioner's trial establishes that both defendants were guilty of the offense, taking into account the credibility of witnesses the trial judge established in finding the petitioner guilty?

B) Can the United States Court of Appeals avoid determining the issue of inconsistent verdicts of the same trial judge, on the grounds that the record of the second trial is not before it?

STATUTE INVOLVED

TITLE 18, SECTION 2421

SECTION 2421. Transportation generally

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia, or in any Territory or Possession of the United States, any woman or girl for the purpose, of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States---

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 812, amended May 24, 1949, C. 139, Sec. 47, 63 Stat. 96.

STATEMENT OF CASE

This is a criminal prosecution based upon an indictment charging the defendant with a violation of Section 2421, Title 18, United States Code of Laws.

An indictment filed on February 14, 1967 charged that the appellant and one Elvin Adams knowingly transported Judith Ann Hein in interstate commerce for the purpose of prostitution on or about the 24th day of June, 1966, contrary to Section 2421, Title 18, U.S.C. Prior to trial the appellant brought a motion to sever his trial from that of the codefendant Adams. The motion was granted. Appellant's trial to the Court was had on September 20th and 21st, 1967, before the Honorable John W. Reynolds, U.S. District Judge presiding. The defendant was convicted, and on November 16, 1967, he was sentenced to a term of two years incarceration.

The trial to the Court of the codefendant Adams commenced on September 22, 1967. The Honorable John W. Reynolds also presided at this trial. At the conclusion of testimony Adams was found guilty.

In the instant case, the woman involved in the transportation and alleged immoral purpose testified in pertinent part as follows:

On June 24, 1966, she was introduce to the appellant and Adams at a tavern in Milwaukee. The appellant and Adams were together when she met them. (T. 4, 9, A-Ap. p. 6) She did not know either man although she had heard of the appellant. After several drinks she accompanied the two men in the appellant's automobile to another tavern a few blocks away. (T. 10, A-Ap.p. 6) After

more drinks the men offered to take her to another bar. Adams drove the automobile. She realized shortly that she had been tricked; that they were not going to another bar but that they were taking her against her will to Chicago, Illinois. (T. 12, 13, 44, A-Ap. pp. 6, 7) She had known the men about two hours at that point. (T. 46, A-Ap. p. 7).

That evening both men had sexual relations with her at the Pershing Hotel in Chicago. (T. 62, A-Ap. p. 8)

The following evening the appellant took her to the New Jackson Hotel. A bellman provided a room for her where she engaged in several acts of prostitution. When the appellant picked her up the next morning, she gave him her earnings. (T. 15-17; A-Ap. p. 6) She was taken back to the Pershing where she stayed in a room occupied by Adams, (T. 26, A-Ap. p. 6) Adams and Miss Hein continued to occupy this room together for about five days until they moved to the Roberts Hotel, also in Chicago. They checked in as Mr. and Mrs. Adams. She continued prostitution activities at the Olympic Hotel while she stayed with Adams. (T. 27) During her stay at the Pershing the appellant took her to the Olympic; after moving to the Roberts, Adams would meet her in the mornings at her place of assignation. (T. 30, A-Ap. p. 6) During this period she also engaged in prostitution activities on one occasion at the New Jackson Hotel. During her stay in Chicago, Adams received most of her earnings from prostitution. (T. 31, A-Ap. p. 6) At some point while she was in Chicago, the two men forced her to marry Adams. Accordingly, on the Friday preceding the ceremony Adams took her to a medical clinic near the Pershing where she submitted to a blood test. (T. 32, A-Ap. p. 6) On July 5, Adams and Miss Hein went to "some building" where they were married (Exh. #3 indicates that a ceremony

was performed on July 5, 1966 by the Honorable Francis T. McCurrie, Circuit Judge, Cook County, Illinois wherein Elvin Adams and Judith Ann Hein were united in marriage). (Exh. 3) The marriage was against her will. (T. 57, A-Ap. p. 8) In spite of this, on her wedding night, she wished to celebrate. Adams, however, insisted that she continue her activities as a prostitute. After a quarrel she went back to work at the Olympic. (T. 34, 35; A-Ap. p. 7)

Several days later a boyfriend from Milwaukee, one Alnus Nicholas, arrived at the Roberts, apparently in search of Miss Hein. An altercation ensued in the course of which Nicholas was shot and Adams was charged with an unspecified criminal offense. The appellant took her to a police station at 26th and California Streets to visit Adams. The appellant also took her to Court for a hearing involving Adams. While at the police station she was left alone by Davis for half an hour while Davis went to get sandwiches. (T. 67, 68; A-Ap. p. 8)

Miss Hein then went to a hotel called the Mark Twain, worked as a prostitute there for one night, then spent most of the day at a hospital, visiting Mr. Nicholas. Nicholas told her to leave Chicago which she did, taking a Greyhound bus to Milwaukee that evening. (T. 37, 38; A-Ap. p. 7)

The testimony of Davis denied substantially the material parts of Miss Hein's testimony. He agreed that he and Adams had driven Miss Hein to Chicago but denied that the purpose was prostitution. He stated that Miss Hein and Adams intended to get married and for that reason Miss Hein accompanied them to Chicago. (T. 122, 123; A-Ap. pp. 9)

Adams substantiated Davis' testimony and added that he had met Miss Hein sometime prior to the trip to Chicago and that he had come to Milwaukee with Davis for the purpose of meeting Miss Hein and taking her to Chicago to get married. (T. 158-161; A-Ap. p. 10) He also denied any knowledge or involvement in Miss Hein's alleged prostitution activities. (T. 165, A-Ap. p. 10)

REASONS FOR GRANTING WRIT

In the instant case the appellant and, one, Adams were jointly indicted for a violation of Section 2421, Title 18, U.S.C., charging that they knowingly transported Judith Ann Hein in interstate commerce for the purpose of prostitution. According to Miss Hein's testimony both defendants misled her into thinking that she was to be driven by Adams from one tavern to another in Milwaukee. Instead, despite her protests Adams in the company of Davis, drove her to Chicago. The night of her arrival she had sexual relations with both defendants. With the exception of the first night she stayed with Adams at two different hotels. Both defendants participated in her earnings from prostitution and both defendants refused to permit her to go back to Milwaukee.

In its decision, the Court of Appeals, page 4, states "some possible differences between the two defendants are suggested by the evidence in this defendant's trial...." Without the record we can only engage in idle conjecture as to why the District Court found insufficient evidence in the second trial to convict the codefendant."

On the basis of the record before it, the Court was aware of the apparent cooperation between the two defendants. The only patent obvious and logical conclusion from the testimony and evidence at pettioner's trial is that each defendant was guilty. It takes more than a statement of possibility of differences to controvert this inference and the Court of Appeals should have examined the record of the second trial. Without dealing specifically and factually with the differences, if any, between the two defendants; the Court has not effectively reconciled the two decisions and they stand inconsistent. It

is petitioners position that a verdict of guilty which cannot be rationally reconciled with a verdict of not guilty is void. Hughes vs. U.S., 95 F2d 538 (5th Cir. 1938) Boyle vs. U.S., 22 F2d 547 (8th Cir. 1927)

Over the strenuous objection of the petitioner, the Trial Court determined the testimony of Miss Hein to be credible. Based upon her testimony, the petitioner was convicted of the offense charged. In the trial of Adams, one day later, the same Trial Court found Adams not guilty. Yet, Miss Hein's "credible" testimony attributes to each man guilty involvement and should convict both men, if in fact her testimony were credible.

The Court of Appeals did not determine this issue of inconsistency on the grounds that the record of the Adams trial was not before it.

Petitioner submits that the record of his trial clearly determines that a finding of not guilty of Adams by the same Trial Judge is inconsistent with his conviction. However, be it necessary to examine the trial of Adams to resolve the issue of inconsistency, the Circuit Court of Appeals should be directed to examine the record of the Adams trial and resolve the issue. Avoidance of the issue only results in a deprivation and something less than substantial justice. The petitioner should not be left without a remedy where it appears highly probable that a wrong has been committed.

For the foregoing reasons it is submitted that this petition for Certiorari should be granted.

Respectfully Submitted

DOMINIC H. FRINZI
161 W. Wisconsin Ave.
Milwaukee, Wisconsin

Of Counsel
EDWARD F. NEUBECKER
623 N. 2nd Street
Milwaukee, Wisconsin

OPINION JUNE 6, 1969

Before Knoch, Senior Circuit Judge and Kiley and Fairchild, Circuit Judges.

Knoch, Senior Circuit Judge. The defendant-appellant, William Davis, was indicted together with one Elvin Adams, on a charge of violating Title 18, U.S.C. Section 2421, transporting a female, one Judith Ann Hein, in interstate commerce for the purpose of prostitution. Mr. Davis' motion for severance was granted. He waived trial by jury. He was tried by the Court and convicted. He was sentenced to serve two years' imprisonment.

The co-defendant, Mr. Adams, testified at the appellant's trial. He stated that he had met Miss Hein in Milwaukee and that in June, 1966, they had traveled to Chicago together with the defendant, to get married here, that they left Milwaukee to avoid the violent opposition of another friend of Miss Hein's, one Aldus Nicholas, whom she feared. He said they were in fact married in the Cook County Courthouse in Chicago by a local Judge on July 5, 1966. The marriage license was an exhibit in the trial. The co-defendant testified further that he lived at the Pershing Hotel in Chicago where he had originally registered as "Mr. and Mrs. Adams" although he was single at the time. He said that he and Miss Hein moved from the Pershing to the Roberts Hotel to avoid Mr. Nicholas' pursuit, but that Mr. Nicholas had found Mr. Adams at the Roberts threatened him with a firearm. An altercation followed which resulted in a shooting and Mr. Adams had been arrested on a charge of battery which was later dismissed. He testified that he saw Miss Hein, who had then become his wife, in the police station and at the preliminary hearing in Court but

had neither seen nor heard from her after that and assumed that his marriage was ended. He described himself as married but separated. He denied ever procuring for Miss Hein and stated that if she had engaged in prostitution in Chicago it was without his knowledge.

Mr. Davis himself testified generally to the same effect. He said he went to Milwaukee to see his mother and his attorney and paid his friend, Mr. Adams, to drive him as he had no license which permitted him to drive in Milwaukee. He said he and Mr. Adams met Miss Hein in a bar in Milwaukee in June, the week before the Fourth of July, and that he agreed to allow his friend and Miss Hein to drive back with him to Chicago because they wished to be married there, that the co-defendant had dropped Miss Hein at his own hotel and had driven the defendant home. Mr. Davis recognized a registration card for the Pershing Hotel made out on June 20th as in his handwriting. He said he rented the room for the use of his visiting cousin and his wife, but signed the name "Mr. and Mrs. James Cooper" which was a name by which he was sometimes known, and giving his own home address, because he was paying for the room. He said he paid for a longer period than needed because the hotel demanded an advance deposit and he neglected to secure a return of that deposit when his cousin and his wife used the room only for a few days. He said he and his own wife had looked at the room once to be sure it was all right and that the hotel records were in error in showing a check-out for June 30. He denied that another registration card shown him (in the name of "Mr. and Mrs. Davis") was made out by him and said he never rented a hotel room there. He said he had a drink with the co-defendant and Miss Hein twice and she had visited his home

once after the marriage, and that after the shooting incident, at her request, he had taken her to the police station; that she later made advances to him which he had declined. He flatly denied having any relations with her, viewing her as the wife of his best friend, and denied having procured clients or rooms for her, denied having visited the hotels about which he was asked, stating that he had visited the Roberts Hotel only once to check on the co-defendants clothing.

Miss Hein's testimony sharply contradicted that of the defendant and the co-defendant. She testified that she met both for the first time on June 24, 1966, although she had heard of the defendant before. She said that she accompanied them to another tavern and agreed to visit a third when she found herself instead, against her will, on the way to Chicago. She testified in detail that defendant took her to several hotels over a period of some ten days where she engaged in prostitution, returning frequently to the rooms she occupied with the co-defendant at the Pershing and later the Roberts Hotel. She testified to turning over her earnings to both men but described the defendant as primarily the one who took her to the hotels and who made the arrangements for her. She said she was forced to marry the co-defendant during this period and after the shooting incident and her visit with Mr. Nicholas at the hospital, she returned to Milwaukee. She said she had not left earlier and had taken no advantage of the numerous opportunities to secure help because she was frightened, even when she was by herself in the streets and shops of Chicago, at the clinic where pre-marital blood tests were made, at the Courthouse where she was married, at the police station when the co-defendant was arrested.

Defendant argues that the evidence of Miss Hein is inherently improbable and that a question of law is therefore presented on which this Court may reverse the conciction. The defendant concedes that a showing of unwillingness on the part of Miss Hein is not required to sustain the judgment, but he contends that the events she relates are so connected that the inherent improbability of her testimony renders it all unworthy of belief.

Joanne Marion Lowry testified that she was with the two defendants and Miss Hein at two bars in Milwaukee, driving in the defendant's automobile, and that she heard no conversation about marriage or going to Chicago. Defense counsel argued at the trial that there was no reason for her to remember such things after so long a time. Similarly when there was some testimony that the two defendants and Miss Hein were seen together at hotels and bars, the defense argued that these incidents were equally consistent with the testimony of the two defendants as with that of Miss Hein.

Nevertheless, we are faced with an issue of credibility. The Trial Judge said he had given all of the evidence and the arguments considerable thought and there was no question at all in his mind, that he was compelled to find the defendant guilty as charged.

We will not weigh the credibility of the witnesses, United States vs. Bruni, 7 Cir., 1966, 359 F. 2d 807, cert. den. 385 U.S. 821, and we must view the evidence in the light most favorable to the government, United States vs. Mims, 7 Cir., 1965, 340 F.2d 851, cert. den. 381 U.S. 913.

It is entirely possible that the Trial Judge saw Miss Hein as a willing victim who had fully co-operated in the design to transport her to Chicago from Milwaukee for the purpose of engaging in prostitution.

Two days after the defendant's trial, the co-defendant was tried, also without a jury, before the same District Judge and found not guilty. Defendant contends that the two verdicts are rationally irr - econcilable. We do not have the record of the second trial before us. Some possible differences between the two defendants are suggested by the evidence in this defendant's trial. As the government point out, Miss Hein's testimony shows that it was this defendant who played the principal role in taking her to the various hotels. The co-defendant was a hired driver, although also a friend of the defendant. During the trip to Chicago, Miss Hein did not travel in the front of the automobile with the co-defendant, but in the rear of the car with this defendant. Without the record we can only engage in idle conjecture as to why the District Court found insufficient evidence in the second trial to convict the co-defendant. We are satisfied that the judgment of the District Court as to this defendant must be affirmed.

A true Copy: Affirmed.
Teste:

TRANSCRIPT OF MATERIAL PARTS OF TESTIMONY TAKEN AT THE TRIAL ON SEPT. 20, 21, 1967, BEFORE THE HONORABLE JOHN W. REYNOLDS

JUDITH ANN HEIN, called on behalf of the United States, testified as follows:

DIRECT EXAMINATION
BY THOMAS R. JONES,
ASSISTANT UNITED STATES ATTORNEY:

(4) I met Davis at a tavern in Milwaukee.
(9) Elvin Adams was with him at the time.

(10)After several drinks we left to go to another tavern.

(12, 13) Davis said he was going to another bar. I didn't know he was headed for Chicago. Adams drove the car.
(15) Davis signed me into a room at the ***
(16) New Jackson Hotel. A bellboy ***
(17) came to my room and told me to go to another room. I had sexual relations

(26) Adams stayed with me at the Pershing Hotel. I stayed there for about five days. We moved to the Roberts Hotel about the 30th of June

(30) At the Olympic Hotel, Adams would meet me in the mornings.

(31) I gave Davis $50-$100 from the money I received from prostitution. I gave most of the money
(32) I received to Adams. On the Friday before July 5 I had a blood test at a place around the corner

from the hotel. On July 5, Adams and I got married ***

(34) That night Adams and I got into an argument. He wanted me to go to work but I yelled at him and said we were supposed to be married, it's our wedding night.

(35) Afterward I went to work at the Olympic.

(37) On the last day Davis signed me into the Mark
(38) Twain *** Hotel. I worked there one night, saw Alnus Nicholas at the hospital kept the money I had earned and took a Greyhound bus back to Milwaukee.

CROSS EXAMINATION
BY EDWARD F. NEUBECKER,
DEFENDANT'S ATTORNEY:

(44) I did not want to go to Chicago on June 24 with Davis and Adams. They tricked or doped me into going with them I told them I wanted to go home
(45) and I told *** them to drop me off. During the time I was in Chicago I wanted to go back home. They kept me in Chicago against my will. Had it not been for them I would have gone back to Milwaukee.

(46) I had never met Adams before June 24. We
(47) took the Illinois tollroad to Chicago, The first hotel we checked into was the Pershing Hotel. There were people in the lobby and desk clerks.
(48) I stayed at the Pershing one day and then we moved to the New Jackson Hotel. There were room clerks and bellboys there. The next hotel I stayed at was the Robert's Hotel.

(50) While in Chicago I went to restaurants and bars in the company of someone else, I went shop-
(51) ping *** at a department store called Yorks three or four times. I came *** into contact with sales ladies there. When I took my blood *** test I went to a clinic around the corner from the hotel. A doctor performed the blood test, I think. I
(53) applied for a marriage license on the 5th of July, 1966 in Chicago. I went to Chicago against my will and I was forced to stay there. I did not complain to any of the attendants at the toll stations that I was being taken to Chicago against my will.
(54) I didn't protest to a filling station attendant when we stopped for gas. I didn't protest to anyone at the York Department Store that I was being held in Chicago against my will ***
(55) I didn't protest at any of the restaurants where I ate. I didn't say anything at any of the taverns
(56) I went to. I saw policemen in cars. I never had the opportunity to call the police or the F. B. I.
(56, 57) in the 10 days I was in Chicago *** I didn't tell the doctor who took the blood test that I was being held against my will. I didn't tell him that I didn't want to go through with the marriage. I didn't tell the judge who performed the marriage ceremony that I was being held against my will.

(62) Davis and Adams took me to Davis' room at the Pershing. Before they let me go to sleep they both had intercourse with me. After I awoke both had intercourse with me again.

(67) My boyfriend Alnus Nicholas came over to my hotel after I was married looking for me. Adams was there, a gun dropped, both fought for it, and Nicholas got shot. Adams went to jail ***
(68) and I went with Davis to the police station at

26th and California Streets to see Adams. Davis went out to get some sandwiches for Adams. While Davis was gone I had an opportunity to tell the police I was being held against my will but I didn't tell them. A day or two later I went to court with Davis when Adams' case was scheduled for a hearing.

REDIRECT EXAMINATION
BY MR. JONES:

(73) I slept in Davis' room once. The rest of the time I slept in Adams' room.

WILLIAM DAVIS, appearing in his own behalf, testified as follows:

DIRECT EXAMINATION
BY MR. NEUBECKER:

(122) Miss Hein and Adams had a conversation in Milwaukee. They were talking about getting married. Adams asked if it would be all right if I took (123) both of them back to Chicago. I didn't force Miss Hein to Chicago.

(130) I didn't obtain any men for Miss Hein for purposes of sexual relations. I didn't have sexual relations with her myself. I didn't obtain rooms (131) for her. I didn't bring any men to any hotel rooms for her.

ELVIN ADAMS, called on behalf of the defendant, testified as follows:

DIRECT EXAMINATION
BY MR. NEUBECKER:

(158) I met Judith Hein in April, 1966, in Milwaukee.

(160) I saw her in May in Milwaukee.

(161) I took Miss Hein to Chicago for the purpose of getting married.

(165) If she engaged in any prostitution activities, it was without my knowledge.